

1 DO NOT PUBLISH

2
3
4
5
6
7 UNITED STATES BANKRUPTCY COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 In re No. 98-45607 JG
11 CAROLE A. OKAZAKI, Chapter 13
12 _____ Debtor./

13 _____
14 MEMORANDUM DECISION: TRUSTEE'S MOTION
15 TO MODIFY DEBTOR'S CHAPTER 13 PLAN
16 _____

17 Martha G. Bronitsky, chapter 13 trustee (the "Trustee"), has
18 moved for a modification of the debtor's chapter 13 plan pursuant to
19 Bankruptcy Code § 1329(a)(1)¹. The court will grant the motion.
20

21 _____
22 ¹Bankruptcy Code § 1329(a)(1) provides:

23 At any time after confirmation of the plan but before the
24 completion of payments under such plan, the plan may be modified,
25 upon request of the debtor, the trustee, or the holder of an
26 allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of
a particular class provided for by the plan . . .

All further section references herein are to the United
States Bankruptcy Code, 11 U.S.C. § 101 et seq.

1 A. Facts

2 The debtor's chapter 13 plan, as filed and confirmed, requires
3 the debtor to make monthly payments to the Trustee of \$430 over a
4 period of 36 months, and to pay unsecured claimants 25 cents on the
5 dollar. The Trustee's motion alleges that the debtor scheduled
6 unsecured claims totaling \$26,918, and that the unsecured claims
7 filed total only \$9,288. The motion requests that the plan be
8 amended to require the debtor to continue her monthly payments of
9 \$430 for the original plan period of 36 months. If so amended, the
10 unsecured claimants who filed claims could receive a dividend of 70
11 cents on the dollar. Absent the amendment, the debtor would be able
12 to benefit from the creditors' failure to file claims by obtaining a
13 discharge after only approximately 20 months in chapter 13.

14 B. Discussion

15 Three clear principles emerge from the case law. First, the
16 amendment requested by the Trustee is not legally mandated. As the
17 court explained in In re Than, 215 B.R. 430, 437-38 (9th Cir. BAP
18 1997), the obligation of a chapter 13 debtor to commit his or her
19 disposable income to a chapter 13 plan for a period of 36 months
20 comes into play only at the time of plan confirmation, and only if a
21 creditor objects to confirmation. Section 1325(b)(1)(B)². The

22
23 ²Section 1325(b)(1) provides:

24 (b)(1) If the trustee or the holder of an allowed unsecured
25 claim objects to the confirmation of the plan, then the court may
26 not approve the plan unless, as of the effective date of the
(continued...)

1 requirement is not applicable when a party, such as the Trustee in
2 the present case, seeks to modify a confirmed plan pursuant to
3 § 1329(a). Than, 215 B.R. at 437-38.

4 Second, to prevail, the Trustee is not required to
5 demonstrate changed circumstances. In re Powers, 202 B.R. 618, 622
6 (9th Cir. BAP 1996); see also In re Witkowski, 16 F.3d 739 (7th Cir.
7 1994). In Powers, the court observed that § 1329 does not mention
8 "changed circumstances" as a condition to a plan modification, and
9 declined to engraft any such requirement into the statute. Powers,
10 202 B.R. at 622. (Moreover, even if § 1329(a)(1) were construed to
11 include a "changed circumstances" requirement, the BAP has stated
12 that an unanticipated failure of creditors to file claims would meet
13 the requirement. Than, 215 B.R. at 436.)

14 Third, grant or denial of a motion to modify a chapter 13 plan
15 is a matter of court discretion, so long as the plan, as modified,
16 meets the applicable confirmation requirements of chapter 13.
17 Powers, 202 B.R. at 622-23. In exercising its discretion, the court
18 may, of course, take into account any changed circumstances. Id.
19

20 ²(...continued)
21 plan—

22 (A) the value of the property to be distributed under
23 the plan on account of such claim is not less than the amount of
such claim; or

24 (B) the plan provides that all of the debtor's
25 projected disposable income to be received in the three-year
26 period beginning on the date that the first payment is due under
the plan will be applied to make payments under the plan.

1 Here, the court believes that the applicable factors weigh in
2 favor of granting the Trustee's motion. The failure of some of the
3 debtor's creditors to file claims is a changed circumstance that
4 will enable the creditors who did file claims to receive a higher
5 dividend, without additional cost to the debtor relative to the
6 terms of the plan she proposed and which the court confirmed. The
7 debtor proposed the plan in the expectation of paying her disposable
8 income to creditors over a period of 36 months, and the proposed
9 amendment does nothing other than preserve this feature of the
10 confirmed plan. The debtor has not suggested that any
11 countervailing considerations are present.

12 C. Conclusion

13 For the foregoing reasons, the court will grant the Trustee's
14 motion. The court requests the Trustee to submit a proposed order
15 within 10 days.
16

17 Date: July 12, 2000
18
19
20

21 _____
Edward D. Jellen
United States Bankruptcy Judge
22
23
24
25
26